



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,345	05/21/2004	Giovina DiMateo-Leggio		4477

7590

06/05/2006

GIOVINA INTERNATIONAL INC. OF AMERICA
SUITE 807
19495 BISCAYNE BLVD.
AVENTURA, FL 33180

EXAMINER

FLOOD, MICHELE C

ART UNIT PAPER NUMBER

1655

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,345

Applicant(s)

DIMATEEO-LEGGIO, GIOVINA

Examiner

Michele Flood

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on June 10, 2005. Further acknowledgment is made of Applicant's cancellation of Claims 1-6, and newly added Claims 7-29.

As the claims are drawn to more than one invention, a restriction requirement is deemed necessary as set forth above.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 7-11, drawn to a method of inducing weight loss and/or fat loss in humans in need thereof, wherein a composition comprising the administration of effective amounts of natural herbs and dietary supplements selected from a recited Markush group, classified in class 514, subclass 909 or class 424, subclass 725+ or class 514, subclass 2+, for example.
- II. Claims 12-15, drawn to a method of hormone replacement therapy reducing symptoms associated with menopause, classified in class 514, subclass 899 or class 514, subclass 2+ or class 424, subclass 725+, for example.
- III. Claims 16-21, drawn to a method of maintaining healthy prostate function which comprises administering to a human middle aged male a composition of effective amounts of natural herbs and dietary supplements

in the amounts of a composition selected from a recited Markush group, classified in class 424, subclass 725+ or class 514, subclass 2+, for example.

- IV. Claims 22-29, drawn to a method of reducing symptoms associated with cellulite deposits which comprises administering to a human usually a female a composition of effective amounts of natural herbs and dietary supplements in the amounts of a composition selected from a recited Markush group, classified in class 514, subclass 860 or class 424, 725+ or class 514, subclass 2+, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the four different groups are directed to four different inventions. For instance, the four different inventions are directed to four different methods of treatment comprising the administration of different ingredients in different amounts.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

This application contains claims directed to different methods of treatment comprising the administration of numerous patentably distinct species of pharmaceutical compositions. See claims 7, 12, 16 and 22.

If Applicant elects any of groups I-IV set forth above, applicant is **also** required under 35 U.S.C. 121 to elect a **single** disclosed species of composition containing **one ingredient, specifically stating the ingredient**, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

If Applicant elects any of groups I-IV set forth above, applicant is **also** required under 35 U.S.C. 121 to elect a **single** disclosed species of disease associated symptom, **specifically stating the disease associated symptom**, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. See claims 10, 13, 17-19 and 23-25.

The species are independent or distinct because the disease conditions (as well as their associated symptoms) are characterized by divergently different clinical manifestations and/or divergently different physiological and biological pathologies; and the ingredients are directed to divergently different chemical compounds and/or phytodivergently different plant extracts or species of plants wherein the search for one of the claim-designated ingredients is not co-extensive with a search for another. Currently, Claims 8, 9, 11, 14, 15, 20, 21, 28 and 29 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

Art Unit: 1655

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MICHELE FLOOD
PRIMARY EXAMINER

Michele Flood
Primary Examiner
Art Unit 1655

MCF
May 25, 2006